

## **05-8820 GARY LAWRENCE V. FLORIDA**

DECISION BELOW: 421 F.3d 1221 (11th Cir. 2005)

LOWER COURT CASE NUMBER: 04-15435

### **QUESTIONS PRESENTED:**

- I. There is a split in the circuits about whether the one-year period of limitations is tolled for "[t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment of claim is pending . . . ." Antiterrorism and Effective Death Penalty Act (AEDPA) 28 U.S.C. Section 2244(d) (2). Where a defendant facing death has pending a United States Supreme Court certiorari petition to review the validity of the state's denial of his claims for state post-conviction relief, does the defendant have an application pending which tolls the 2244 (d)(2) statute of limitations?
- II. Alternatively, does the confusion around the statute of limitations --as evidenced by the split in the circuits --constitute an "extraordinary circumstance," entitling the diligent defendant to equitable tolling during the time when his claim is being considered by the United States Supreme Court on certiorari?
- III. And in the second alternative, do the special circumstance where counsel advising the defendant as to the statute of limitations was registry counsel - a species of state actor - under the monitoring supervision of Florida Courts, with a statutory duty to file appropriate motions in a timely manner, constitute an "extraordinary circumstance" beyond the defendant's control such that the doctrine of equitable tolling should operate to save his petition?

Cert. Granted 3/27/06